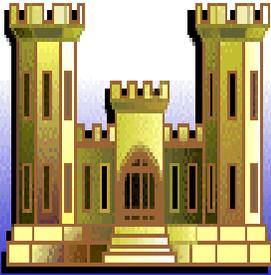


# Equal Employment Opportunity (EEO) Handbook for Supervisors



Welcome to the US Army  
**Corps of Engineers**

## NORTHWESTERN DIVISION

- \* KANSAS CITY DISTRICT
- \* OMAHA DISTRICT
- \* PORTLAND DISTRICT
- \* SEATTLE DISTRICT
- \* WALLA WALLA DISTRICT



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U.S. ARMY CORPS OF ENGINEERS  
NORTHWESTERN DIVISION

30 January 2002

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## **PURPOSE**

Every Federal agency has a responsibility for maintaining an effective equal employment opportunity (EEO) program. Each manager and supervisor within the Federal government is charged with supporting the goals and objectives of equal employment opportunity and affirmative employment. In order that these goals and objectives be met, it is necessary that managers and supervisors understand EEO, its process and affirmative employment.

This handbook is designed to facilitate equal employment opportunity in recruitment, hiring, promotion, retention, recognition, and disciplinary actions. It is also designed to be a guide for supervisors and managers in their daily decision-making and application of personnel practices and policies.

## **OBJECTIVES**

The objectives of this handbook include providing supervisors and managers with:

- A practical understanding of EEO and their responsibility to support EEO program goals and activities;
- A practical understanding of affirmative employment;
- Tools to effectively manager a diverse workforce;
- A glimpse at actions that can lead to EEO complaints;
- A guide to effective management from the EEO perspective; and
- An overview of the laws and regulations that govern EEO.

## EEO Self-Inventory

### HOW MUCH DO I KNOW ABOUT EEO and AFFIRMATIVE ACTION?

Take a few minutes to answer the following questions:

- Yes No I understand the personal and organizational implications of discriminatory workplace practices.
- Yes No I recognize factors in the workplace that might be construed to be illegal under existing equal employment opportunity (EEO) laws.
- Yes No I know how to correct conditions that could lead to complaints of discrimination.
- Yes No I know how to test decisions against the requirements of EEO and affirmative action principles.
- Yes No I communicate personal and organizational commitment to EEO and affirmative action principles.
- Yes No I understand that equal opportunity is not limited to gender or race, but also covers groups such as people with disabilities and people age 40 and older.

Have you checked any answers "no"? If you have, pay particular attention to the material we are going to cover in this handbook that will help you get to a "yes" answer. There are legal ramifications for "no" answers that could get you and/or the organization into serious trouble if you are uncertain about your obligations under the current laws and regulations.

## **Part I: AFFIRMATIVE EMPLOYMENT**

### **1. What is Affirmative Employment?**

The goal of every government agency is to seek to provide full and fair employment opportunities in the work place. One of the tools the Federal government uses to accomplish this is affirmative action or affirmative employment. Essentially, affirmative employment is a conscious, deliberate effort to ensure qualified minority, disabled and female employees are given a full and fair opportunity to be represented in, and succeed in the agency's workforce. In order to decide whether affirmative employment is necessary, you must first determine whether this specific group is already fully represented in the workforce. You accomplish this through the Affirmative Employment Program planning process.

The affirmative employment programs that come under the auspices of the equal employment opportunity program are the Affirmative Employment Plan for Women and Minorities and the Affirmative Action Plan for Persons With Disabilities.

### **2. Affirmative Employment Plan for Women and Minorities (AEP):**

The AEP is a plan with a detailed set of goals, objectives, and action items developed in response to an analysis of specific EEO program areas. The analysis, which includes a statistical analysis of the number of women and minorities in the workforce compared against the available number in the labor force, results in the identification of barriers to effective affirmative employment efforts.

The identification of barriers to effective affirmative employment efforts leads us to the development of the goals and objectives with specific action items geared to resolve the problem areas. The specific program areas that are analyzed are:

- Prevention of Sexual Harassment
- EEO Organization and Resources
- EEO Workforce Profile
- Discrimination Complaints
- Recruitment and Hiring
- Employee Development Programs

## **Part I: AFFIRMATIVE EMPLOYMENT**

- Promotions
- Separations
- EEO Program Evaluation

The objectives of an Affirmative Employment Plan are to:

- Assign responsibility and authority for the program and its accomplishment to the Commander.
- Establish a strong division/district policy that affirms our commitment to equal employment opportunity.
- Identify occupations, divisions, offices, etc., where minorities and women are underrepresented.
- Reevaluate selection criteria to ensure it reflects job-related requirements.
- Identify specific efforts to recruit qualified women and minorities who can meet job requirements and/or become qualified to do so, e.g., upward mobility.
- Hold every division/district manager and supervisor accountable for helping achieve the objectives of the AEP.

An Ad Hoc Task force is convened to accomplish the above analysis and problem identification portion of the AEP, which is then compiled and coordinated by the EEO Office. The officials responsible for action item accomplishment are identified, and timelines are set.

### **3. Affirmative Action Plan for Persons With Disabilities**

The Affirmative Action Plan for Persons With Disabilities requires goals and timetables for accomplishment of those goals. The plan must include:

- 0 A policy statement signed by the Commander, stating the Division's or district's commitment to affirmative action for persons with disabilities and outlining affirmative action responsibilities for each manager and supervisor.
- 0 A statement on policy dissemination that should include all employees and union officials, where appropriate. Public

## **Part I: Affirmative Employment**

and private recruitment sources, subcontractors, vendors, and suppliers must also be notified of the policy and their support of the policy requested.

- 0 Appointment of a member of top management to implement, direct, and coordinate the plan.
- 0 An internal auditing and reporting process to help monitor and measure progress in each aspect of the plan.
- 0 A description of problem areas and the corrective action to be taken.

### **4. How to Implement?**

Managers and supervisors should take a variety of positive steps to ensure that women, the disabled and minorities are aware of available positions and that they apply for these positions. They should also give women, the disabled and minorities full and fair consideration for the positions based on their qualifications and abilities. By selecting these employees from a list of eligible qualified candidates, the manager achieves a better workforce balance. The positive steps are depicted in the AEP, which becomes the road map for implementation of affirmative employment.

Inasmuch as EEO is a management-oriented program, all supervisors and management officials are responsible for the implementation of the affirmative employment plan. Upon reviewing the plan, individual supervisors/managers should note where they are designated, by position, as a responsible official. As a designated responsible official, the supervisor/manager then has responsibility for accomplishing that action item within his/her organizational parameter. The program analysis section will provide information to assist in determining what and why action items are developed.

### **5. Goals vs. Quotas?**

The use of employment goals is controversial. Such use raises questions of whether a goal implementing action is discriminatory against groups of potential employees not covered by the AEP plan. There is a difference between a goal, objective, and meeting employment quotas.

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A goal is an objective toward which an organization works. It is not a mandatory number that must be met regardless of applicant qualifications. Managers should try to fulfill goals without sacrificing qualifications and abilities.

Additionally, a goal is not a quota. A quota is a mandatory number of positions that must be filled, usually by a certain date. Although organizations may routinely establish specific goals for the employment of women and minorities, they are required to avoid establishing quotas. A supervisor is not required to hire specific groups of employees without regard for their qualifications.

### **6. Attitudes and Affirmative Employment:**

#### **EXERCISE #1: Attitude About Others:**

Let's examine your attitude about others and how that might play into the affirmative employment process. Check the beliefs you agree with.

- Minority employees have a more difficult time being accepted by the organization's customers than Whites.
- People of certain religions will not work weekends.
- A person's medical history will indicate how well they can work.
- Usually, White people are more intelligent and experienced than Blacks and Hispanics.
- Minority employees tend to cause dissension and generate lots of grievances and/or EEO complaints.
- Minorities can usually get by on lesser salaries than Whites.
- Minorities who do not speak English well will not be able to follow or give directions.
- Older people approaching retirement are not stable employees.

## **Part I: Affirmative Employment**

- Women do not devote as much time to their jobs as men do.
- There are "regular hires" for Whites and "affirmative action hires" for minorities.
- Women bring their "home" problems to work with them.
- Men usually do not like to work for women.
- Minorities know much more about each other than Whites do.
- Women are too emotional to make good decisions.
- Qualifications are irrelevant when hiring a minority.
- Women usually do not like to work for women.
- I may give extra "points" or credit to a woman or minority in the selection process.
- Employee retirement plans may be considered in the selection process.
- An employee with a disability should be able to do the job without any accommodations.

**Answer:** If you agreed with any of the above statements, you could be headed for trouble either legally or interpersonally. It would be a good idea to check the facts. In agreeing with any of the above statements, you may be on your way to a Title VII violation (discrimination) or personally promoting the perception that you do not support equal employment opportunity.

### **7. Attitudes Affect Behavior:**

Our attitudes are reflected in our behavior. They usually govern our actions and determine our sense of direction. Sometimes we are fully aware of this. At other times we are not.

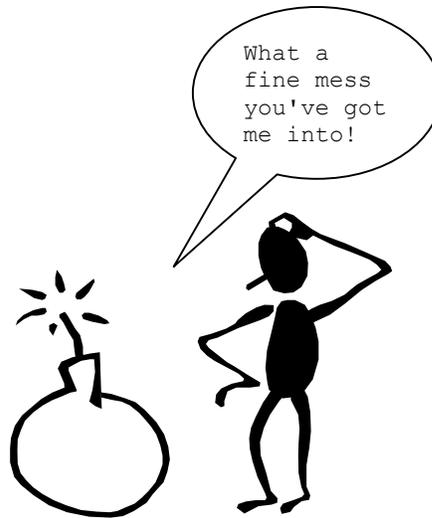
If our attitudes contain bias and prejudice, there is a very good chance these will be reflected in our work ethic and

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business decisions. The end result may be an inability to deal positively with some major human issues on the job. If you feel this could be happening in your case, do something about it. Education, gathering facts, examining your attitude toward women, and minorities and realistic evaluation of the issues may be required.

### **ALWAYS REMEMBER!**

*YOU ARE RESPONSIBLE FOR YOUR ATTITUDES AND BEHAVIOR!*



YOUR ATTITUDE TOWARD EEO IS IMPORTANT?



If leaders do not place a high value on achieving EEO goals in their organization, the effort will fail. Conscious effort to

## **Part I: Affirmative Employment**

identify deficiencies and solve problems is required to achieve success in meeting the EEO goals of the organization.

Poor or unreasonable attitudes about the abilities, habits, or likely behavior of females and members of racial groups, can destroy the ability to accomplish EEO goals. Commitment is key to maintaining an appropriate work environment. If you have not already done so, now is the time for you to examine your attitudes, where they came from, and what you are willing to do about them.

## **WHO, WHAT, WHY, WHERE, WHEN?**

### **Part II: Discrimination**

#### **1. Illegal Employment Practices:**

The following practices reflect the direction of current law and the dangers inherent in careless personnel practices and techniques. Check those you need to learn more about. Then consult with the EEO Officer to get the help you need.

#### **Under Current Law, It Is Unlawful To:**

- Refuse to consider for employment, or otherwise discriminate against any person because of race, color, national origin, sex, religion, age, or physical and mental disability.
- Show a bias in help-wanted advertising for or against applicants based on race, color, national origin, sex, disability, religion, or age unless you can prove your requirements are job related occupational qualifications through a Bonafide Occupation Qualification (BOQ).
- Use any screening techniques for employment or promotion (paper and pencil tests, questionnaires, materials) that cannot be proved to be directly job-related.
- Categorize job candidates on the basis of race, color, national origin, sex, religion, or age.

## **Part II: Discrimination**

- Condone or permit sexual harassment of employees.
- Segregate employees by race, religion, and national origin with respect to working areas, toilet, locker, and/or recreational facilities.
- Cause or attempt to cause an employer to discriminate against any person because of race, color, age, religion, national origin, sex, or veteran's status through actions initiated by a union.
- Refuse to hire a woman because separate facilities would have to be provided.
- Perpetuate past discriminatory practices that have led to statistical imbalances in the workforce.
- Discharge, layoff, or otherwise terminate an employee on the basis of race, religion, sex, national origin, or age.

### **2. The EEO Complaints Processing System:**

Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination in employment. In order to comply with this Act, Department of the Army, the Mississippi Valley Division (MVD) and the MVD districts establish policies that prohibit discrimination in all employment policies and practices. Throughout MVD and its districts, everything possible is done to insure that employees and applicants for employment are not subjected to discrimination in any form and that merit principles apply to all terms and conditions of employment. Occasions do arise, however, when employees or applicants believe that they have been victims of discrimination based on sex (including sexual harassment & equal pay), color, disability (mental or physical), age, race, national origin, religion, or reprisal. The Army has developed a complaint processing system designed to ensure that each of its organizations complies with established policies and that ensures that discrimination complaints are addressed quickly and efficiently. The complaint processing system is covered by AR 690-600 which is available from the EEO Office.

It is the EEO Officer's responsibility to ensure that all employees, applicants for employment, contractor employees, and the general public are made aware of the division's/district's

## Part II: Discrimination

policies regarding non-discrimination and the avenues available for pursuing complaints. Some methods for accomplishing this requirement are:

- dissemination of EEO posters
- recurring notices to employees
- articles from various publications
- mandatory training

### 3. What is Discrimination?

Before proceeding into how the complaint process works, let us talk about what discrimination is, and the types of discrimination an employee may claim. The term discrimination means making a decision based on some distinguishing, legitimate factor, which is not unlawful.

Unlawful discrimination decisions are based on treating people differently for improper reasons based on race, age, sex, color, national origin, and physical or mental disability. Preventing unlawful discrimination is one of the primary purposes of the EEO program. As a manager or supervisor, you are required to use sound judgment in making routine and difficult supervisory decisions to ensure unlawful discrimination does not occur.

There are two types of discrimination recognized by the courts:

- a) **Disparate Treatment** is the most common allegation a supervisor may confront. Employees may claim they were treated differently because of their race, color, sex, age, nationality, religion, and/or disability. This claim usually follows some form of personnel action.
- b) **Disparate Impact** focuses on a system (such as promotion, training, or entrance examination) that appears to treat everyone alike but has the effect of harming a particular group. The claim may be made by an individual or a group. If the claim is filed by a group, it is called a **class action complaint**. In class action complaints, there will generally be involvement by management as a whole, rather than one individual manager.

## Part II: Discrimination

Employees may claim discrimination based on eight different bases (as mentioned above). Lets explain them:

- a) **RACE:** A group of people who are united by a common history, nationality, or tradition. Origin determines what racial group that person belongs to, such as Caucasian (White), Negro (Black), or Asian.
  
- b) **COLOR:** Refers to the actual shade of one's skin and may constitute a separate factor regardless of race. For instance, people in India may have darker skin tones than those of African descent. It may also refer to a preference for or bias against people of a particular race who are darker or lighter in skin color.
  
- c) **SEX:** Gender may not be considered in hiring or promotion decisions.
  - 1. **Sexual Harassment:** This is a second form of sex discrimination. The definition centers around behaviors that are unwelcome, deliberate, repeated, and are sexual in nature.
  
  - 2. **Equal Pay Act:** Compensating men and women differently for equal work.
  
- d) **RELIGION:** Refers to a person's religious beliefs or affiliation, lack of either or strongly held beliefs or creed. Religious discrimination can be used as a basis for a complaint when either the employee is treated differently or if the organization fails to make reasonable accommodation of needs required by the person's religion.
  
- e) **NATIONAL ORIGIN:** Is a basis for discrimination involving employment decisions or treating a person differently based on that person's country of origin. Complaints are usually based on treatment perceived to be influenced by a person's last name, accent, or cultural heritage. This perception may grow out of statements, jokes, or other indications of bias.
  
- f) **AGE:** Is used as a basis for a discrimination complaint by people age 40 and older. Age discrimination may involve individuals who are all over 40. An example of the latter

## **Part II: Discrimination**

is that a 58-year old person could claim that he/she has been discriminated against when a 45-year old person was selected for a position that he/she (the 58-year old person) applied and was qualified for.

- g) **PHYSICAL AND MENTAL DISABILITIES:** Defined by the Rehabilitation Act of 1973 as any person who has a physical or mental impairment which substantially limits one or more of such person's major life activities, has a record of such an impairment or is regarded as having such an impairment. The same law requires reasonable accommodation of these persons. It also covers treating people as though they had a disability when they do not, and treating people based on a record of having had a disability (i.e., someone who had a disability and has recovered or who was once incorrectly classified as having a disability).
- h) **REPRISAL:** The unlawful restraint, coercion, interference, intimidation or discrimination against complainants, representatives, witnesses, EEO staff officials or any other agency official responsible for processing complaints during any stage in the presentation and processing of the complaint or because of any opposition to any unlawful EEO employment discrimination. In order to be considered reprisal, the current incident of discrimination must have occurred within a relatively current period of time, e.g., one-year or less, from the previous Title VII activity. In any case, the complaining party must establish a nexus between the protected activity and the alleged act of reprisal.

### **4. The Precomplaint:**

EEO Counselors are the first point of contact for employees and serve as a bridge between management and complainants. The primary goal of the EEO Counselor is the informal resolution of all complaints brought before them. In order to accomplish this, the counselor must gain the trust and confidence of both employees and management. The counselor is a fact finder not an investigator. In the course of their duties, an EEO Counselor conducts an informal inquiry concerning all allegations of discrimination and tries to obtain facts pertinent to the allegations. EEO counselors must be appointed by the commander. The names and phone numbers of counselors are posted on all official Corps of Engineers bulletin boards. It should be

## **Part II: Discrimination**

emphasized that the counselor's primary responsibility is to gather facts and make every effort to resolve complaints in the earliest possible stages. While the counselor does not determine whether or not discrimination actually took place, counselors often will make recommendations for resolution based on the information that they have gathered.

Any employee or applicant for employment who believes that he or she has been discriminated against (\*aggrieved individual) must first discuss the concerns with an EEO Counselor. During this informal stage the counselor will:

- a) Listen and help the aggrieved individual identify their problem.
- b) Advise the aggrieved individual of their right to representation.
- c) Study the problem impartially and objectively; and advise all persons involved of their rights.
- d) Answer questions honestly.
- e) Examine any documents relating to the aggrieved action.
- f) Discuss the aggrieved problem with supervisors or management when appropriate.
- g) Conduct an inquiry into the matter giving rise to the complaint.
- h) Try to resolve the aggrieved individual's problem informally.

EEO Counselors report regularly to the EEO Officer about their activities; however, they will use an aggrieved individual's name only if they have their written permission. The Counselor will make recommendations for action to the EEO Officer.

Aggrieved individuals must contact the EEO Counselor within 45 calendar days of the date of the incident that caused them to complain OR, if it is a personnel action, within 45 calendar

\*The term "aggrieved individual" is the same as "complainant".

## **Part II: Discrimination**

days of its effective date. This period may be extended at the discretion of the EEO Officer or if the aggrieved individual did not know of the time limits.

The EEO Counselor will make every effort to find a solution to the problem, which is acceptable to both the aggrieved individual and management. The Counselor has 30 calendar days from the date of the reported problem, to attempt an informal resolution. Early in the informal counseling stage, the Counselor will explain the Corps' \*Alternative Dispute Resolution (ADR) process to the complainant. Prior to making an offer to the complainant to participate in ADR, the ADR team, which includes EEO, Office of Counsel and Human Resources, will meet to determine whether the allegations raised in the complaint are appropriate for ADR. If the offer to participate in the ADR process is made to and accepted by the complainant, counseling may be extended up to an additional 60 days. If the offer is rejected, the Counselor will advise the complainant of his/her right to file a formal complaint with the EEO Officer.

\*ADR is discussed in the following subsection.

### **5. Corps Of Engineers Alternative Dispute Resolution Program (ADR) :**

The Corps of Engineers Alternative Dispute Resolution Program (ADR) is an option available to complainants to make another attempt at resolving the dispute. ADR offers a variety of methods to resolving conflict in a collaborative framework with a neutral third party. The Corps of Engineers has selected **mediation** as the ADR method to be used to resolve employment-related disputes.

**Mediation** involves the intervention of a neutral and impartial third party into the dispute. The objective of this intervention is to assist the parties to voluntarily reach an acceptable resolution of the issues in dispute.

The mediator assists in clarifying issues, identifying underlying causes and arriving at appropriate remedies to resolve the dispute. A mediator, like a facilitator, makes primarily procedural suggestions regarding how parties can reach agreement. Occasionally, a mediator may suggest some

## **Part II: Discrimination**

substantive options as a means of encouraging the parties to expand the range of possible resolutions under consideration. A mediator often works with the parties individually, in caucuses, to explore acceptable resolution options or to develop proposals that might move the parties closer to resolution.

Confidentiality is essential to the success of all ADR proceedings. By statute at 5 U.S.C. Section 574, Congress has provided for the preservation of confidentiality of information provided during ADR proceedings. As such, ADR communications are kept confidential, and such information may not be used later by or against the aggrieved individual. In 1996, per Public Law 104-320, Congress amended the Administrative Process Alternative Dispute Resolution Act by exempting from disclosure, communications during ADR proceedings, under the Freedom of Information Act. Accordingly, all ADR written statements and verbal information are kept confidential and may not be used by any individual in any subsequent proceedings. For resolution purposes, the details are disseminated only to specific offices with a need to have that information.

Confidentiality must be maintained by all parties to include any agency employees involved in the ADR proceeding and in the implementation of an ADR resolution, and by any neutral third party involved in the proceeding.

Corps employees, applicants for employment, and former employees who initiate a timely informal complaint of discrimination on matters arising during their employment with the Corps may choose to participate in USACE EEO ADR. Participation is voluntary by the aggrieved individual. USACE has voluntarily determined that participation in mediation by management is mandatory when an aggrieved individual chooses to proceed with mediation.

Once the aggrieved person agrees to participate in ADR, the EEO officer will select a mediator who will coordinate logistical arrangements and proceed expeditiously to conduct the mediation. The pre-complaint period is extended for up to an additional 60 calendar days to accomplish the mediation. The mediator will explain how he/she will conduct the mediation process; however, once the mediation is initiated, it should be conducted within 1-2 days. The management official responsible for taking the alleged discriminatory action will participate in the mediation.

## **Part II: Discrimination**

A dispute may be resolved by voluntary withdrawal of the claims or by a settlement agreement. If the involved parties reach an agreement, the mediator will coordinate with the EEO Officer to obtain a written settlement. If any issues remain unresolved, the mediator will notify the EEO Officer of the outcome. The EEO Officer will notify the EEO counselor to issue a final interview letter and complete the counselor's report.

All parties at the ADR proceeding will have the opportunity to bring a representative, if they choose to. The disputing parties, not their representatives, will be expected to speak on their own behalf during mediation.

The resolution officials are commanders, or their designees, who are authorized to engage in mediation and have the authority to execute settlement agreements. The resolution official will have no direct involvement in the dispute.

Prior to the counselor making an offer of mediation to a complainant, the ADR team will meet to determine if the issues in the complaint are appropriate for mediation. The ADR team is comprised of the EEO Officer, Labor Counselor, the Civilian Personnel Advisory Center, and/or Human Resources representatives. The role of this team is to review the claims raised, determine whether the complaint will be processed through USACE EEO ADR, discuss settlement options and assist the mediator, as appropriate. The team will also review the settlement agreement to ensure such settlement is executable by the agency.

### **6. Formal Complaint**

If an individual decides to file a formal complaint he/she has 15 calendar days from the date the counselor gives them the "Notice of Right-to-File". The complaint must be in writing (use DA Form 2590-R available in the EEO Office) and may be filed with the Secretary of the Army, the EEO Officer or the Commander. If the aggrieved individual chooses to file with an official other than the EEO Officer, they should also submit a copy of the complaint to the EEO Officer since the complaint will be processed by that office. The complaint must be specific and it must be limited to the matters discussed with the EEO Counselor in the pre-complaint stage. No new allegations may be interjected at this time.

## **Part II: Discrimination**

Upon receipt and acceptance of a formal complaint, the EEO Officer will obtain the Counselor's written summary report of the informal complaint (Final Counseling Report) and will request an investigation from the Department of Defense Civilian Personnel Management Service Office of Complaints Investigation (OCI). OCI will request the EEO Office send them the final counseling report, any personnel records related to the complaint, statistical analysis of the workforce and any documents that would help them prepare for their investigative fact-finding conference. Sworn or affirmed testimony will be taken from the complainant, any witnesses, and the principal agency witness, if any.

### **7. Being Named In An EEO Complaint:**

Although EEOC does not require it, the Army has termed the agency official responsible for the alleged discrimination as the "Principal Agency Witness" or PAW. It is also not a requirement for an aggrieved person to name a PAW; however, if a supervisor or manager is named as PAW in a complaint, he/she has rights available to them.

Principal Agency Witnesses must be given an adequate opportunity to respond to the allegations made by the aggrieved person and to any documentation or witness statements presented to support the allegations. The PAW will also have an opportunity to respond to any documentation collected by the OCI Investigator that names or implicates him or her. Providing these officials with an opportunity to respond to each allegation or supportive documentation is more than just a concern regarding due process. A fully adequate response by the Principal Agency Witness insures a complete investigative record from which a fair and impartial decision can be rendered.

The Corps' Labor counselor/Agency Representative represents the Army and may not represent an individual PAW. A PAW is entitled to a representative of their choice, as long as the selection does not present a conflict of interest.

### **If You Should Be Named:**

If you are named as a PAW in an EEO complaint of discrimination the following provides guidance to assist you in fulfilling your responsibility to the process.

## **Part II: Discrimination**

A discrimination complaint is, by nature, an adversarial process and may ultimately result in litigation. Because of this, extra care must be exercised to avoid even the appearance of reprisal or harassment. Filing a complaint of discrimination is a relatively simple process. During the administrative processing of a complaint, neither side has to prove or disprove that discrimination took place. An informal complaint is nothing more than an allegation. There must be some basis to it; however, there need not be any proof. In other words, "I believe I've been discriminated against..." may be sufficient to take the complaint all the way into Federal District Court to be heard by a jury.

✓ Two of the most common errors made by management in a discrimination complaint are trying to prove their innocence or assuming an attitude that EEO complaints are a waste of time. Both behaviors usually compound the problem. The first mistake (trying to prove innocence) is premature and creates a win/lose atmosphere when the counselor and the "system" are searching for a win/win compromise. Assuming an attitude that EEO complaints are a waste of time, on the other hand, stifles communications. Managers should avoid these behaviors and give full cooperation throughout the process so that there may be order in the workplace and everyday tensions between the manager and the employee may be reduced.

✓ Gather all documents related to the complaint, make copies, & file them where you can easily retrieve them.

✓ Exercise your right to have a representative. The EEO and Human Resource Officers and their staffs are neutral advisors and may not serve as your representative. Also, the Labor Counselor may not serve as your personal representative. A friend/colleague (whose judgment you trust) can be of considerable help by providing moral support and objectivity. To obtain emotional and psychological help, a manager may also avail himself/herself of the services provided by the Employee Assistance Program (EAP).

✓ Gather your thoughts and review the decision and your actions leading to it.

## Part II: Discrimination

- ✓ Ensure that all employees and applicants are free to use the due process afforded by discrimination complaint procedures without fear of reprisal.
- ✓ Assure that rights of other managers, who are named as PAWs, are preserved.
- ✓ Assure that the mission and goals of the organization continue to be accomplished in the most effective and efficient manner.
- ✓ During the investigation, keep your statements factual. Do not offer opinions and ensure that you provide factual information relevant to the issues and/or allegations. A cooperative attitude is essential.
- ✓ Try not to take the complaint personally. The complaint procedure is not used to indict management or individual managers. The process provides a forum for employees to air their workplace disputes and a fact-finding method for management response.
- ✓ Contact the EEO Office if you have any questions regarding your status as a PAW or about the discrimination complaint process.
- ✓ Do not discuss the complaint with individuals who do not have a "need to know." Do not discuss the complaint directly with the aggrieved individual unless the discussion is a part of the EEO counseling and/or ADR procedures. Pointless discussion/gossip often contributes to interoffice divisiveness and turmoil and may lead to a reprisal complaint from either the aggrieved individual or a witness. A person alleging reprisal does not need a finding of discrimination in the original complaint in order to prevail.
- ✓ Above all, keep calm and remember you are setting the example for others to follow. When you overreact or behaviorally or verbally express anger over the complaint, you are not in control and may give credence to the allegations.

## **Part II: Discrimination**

If you are a PAW, you will be required to give a statement regarding why you made the decision that is in dispute. When called to give a statement to an EEO official, make sure that you are prepared. You have the right to request that the interview does not take place until you have had time to prepare. Below are some additional tips to remember during the interview:

- ❖ You may have a representative with you if you choose.
- ❖ Listen carefully to every question.
- ❖ Address any inaccuracies you believe are present in the questions as they are asked so that the record reflects all of your statements or objections.
- ❖ Answer as truthfully as you can without guessing at answers...admit to forgetting, not knowing answers to questions, or having no knowledge of the situation or circumstances given.
- ❖ Do not sign anything you do not believe is 100% accurate.
- ❖ Take your time and think over all answers; you should look through your records if you require information not readily at hand. Do not be rushed.
- ❖ Remember that the Labor Counselor (Agency Representative) represents the Army/Agency, not you. This does not prevent you, however, from consulting with the Labor Counselor. Be aware that your interests may be contrary to the interests of the Army. The Labor Counselor is responsible for the interests of the Army. In this situation or if you believe you need a personal representative, you should consider obtaining one.
- ❖ Ensure the relevant facts are included in your statement, supplementing the statement with your own information, if necessary.
- ❖ Read the statement carefully and do not sign it until you are confident it is accurate and properly reflects your position.
- ❖ Keep a copy of everything you sign or give to the investigator.

## **Part II: Discrimination**

When called as a witness in an EEO matter, you will first be interviewed by the agency's representative Labor Counselor. The Labor Counselor will prepare you for what may be expected during the administrative proceedings. Below are some general guidelines you need to follow:

- ◆ Tell the truth.
- ◆ Wear clothing that is comfortable yet professional.
- ◆ Listen carefully to the questions and answer only the questions you are asked. Do not elaborate on "yes" and "no" questions. If a question cannot be answered "yes" or "no", say so and explain why.
- ◆ Do not argue with the complainant's representative.
- ◆ Stay calm. Do not compromise your professionalism. Demeanor is very important when presenting your statement.

### **8. The EEOC Administrative Hearing**

In formal EEO complaint processing, a complainant may request a hearing before an EEOC Administrative Judge (AJ). An EEOC AJ is a neutral full-time official of the EEOC who presides over the hearing to listen to both sides of the complaint. AJs hear complaints in the private sector as well as the Federal government. While the hearing conference is informal and conducted telephonically, the hearing is very formal and conducted in a manner similar to a trial.

Management officials, the complainant and others who have observed the dispute or have pertinent information may be called to testify as witnesses. All relevant documentation and evidence is provided and each side makes a final summary of how it believes the case should be solved. The burden of proof lies with the complainant. The presentation of the Army's case is done by the Agency Representative/Labor counselor. A complainant may present their own case and/or they may have a representative as well. The complainant's representative is often an attorney. That attorney is not in the employ of the Federal government.

## **Part II: Discrimination**

### **9. Dealing With the Decision:**

The Administrative Judge must make a recommended finding based on the evidence presented in the record. The Department of Army EEO Office may either reject or accept the finding. If the allegation of discrimination is found to be supported, the organization must then provide the remedy that makes the employee whole. An example is in a non-selection case: the complainant is entitled to the position in question. On the other hand, if the allegation is found to be unsupported, the complainant may then appeal the Army decision. He/she may also appeal if the remedy is less than he/she is seeking.

If the agency has not made a final decision within 180 days of filing a formal complaint, the complainant may initiate action in a Federal District Court.

### **10. Sexual Harassment**

Title VII of the Civil Rights Act of 1964 prohibits sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature. DOD, HQDA, HQUSACE, USACE Division and District policies further define what is considered sexual harassment and establish the parameters for handling such allegations. Supervisors and employees need to be made aware that the Army promulgates a zero tolerance policy for behaviors that are construed as sexual harassment. Sexual harassment is...unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- Submission to, or rejection of, such conduct is used as a basis for employment decisions; or
- Such conduct interferes with an individual's work or creates an intimidating, hostile, or offensive work environment.

Before going on, let us review the policy on the prevention of sexual harassment and what it means to managers and supervisors in their day-to-day management of employees. The main points to remember are:

## Part II: Discrimination

- No action is required by the complaining party except to tell the alleged harasser that the behavior or remarks are unwelcome and unwanted.
- Allegations or potential problems must be immediately reported to the Commander and the EEO Officer. If the individual wishes to remain anonymous, reporting individuals must respect that wish and not disclose the complainant's identity.
- The investigation and processing of sexual harassment complaints are expedited under 10 U.S.C. Section 1561.
- What constitutes sexual harassment is often defined by what the victim has endured.
- A finding of discrimination in a sexual harassment complaint leads to an AR 15-6 investigation to determine culpability.

### a. What Constitutes Unlawful Sexual Harassment?

In 1990, the EEOC identified the types of sexual harassment situations that could be construed to be unlawful discrimination. Subsequent court decisions have been generally consistent with these guidelines.

<b>TYPES OF UNLAWFUL SEXUAL HARASSMENT</b>	
<i>Type</i>	<i>Situation</i>
I	<p>To be considered unlawful, three conditions must be met:</p> <ol style="list-style-type: none"> <li>1. There must be verbal or physical conduct of a sexual nature.</li> <li>2. The verbal or physical sexual conduct is <b>unwelcome</b>. The <b>unwelcome</b> behavior is usually persistent.</li> <li>3. Acceptance or rejection of the sexual advances or requests becomes the basis of a decision affecting the person's employment.</li> </ol>
II	<p>Verbal or physical conduct of a sexual nature interferes with a person's performance. Such behavior often creates an offensive work environment</p>

	for that person and they are intimidated by such conditions. Allowing sexually explicit language in the workplace can lead to charges if any employee objects.
III	An employee receives an employment advantage-e.g., is hired, promoted, given more favorable hours than other applicants or employees, because he or she submitted to a sexual advance.
IV	A non-employee of the organization such as a contractor or customer sexually harasses an employee with the division's/district's knowledge and the division/district does not take corrective action.

**b. Sexual Harassment Does Exist.**

<b>TYPICAL FORMS OF HARASSMENT</b>		
<i>Verbal</i>	<i>Visual</i>	<i>Physical</i>
<p><b>Telling risqué jokes</b></p> <p><b>Asking for sexual favors</b></p> <p><b>Comments about sexual anatomy</b></p> <p><b>Pursuing an unwanted relationship</b></p> <p><b>Unwanted compliments with sexual overtones</b></p>	<p><b>Wearing suggestive attire</b></p> <p><b>Staring at someone's sexual anatomy</b></p> <p><b>Flirting non-verbally</b></p> <p><b>Not wearing undergarments</b></p> <p><b>Sitting in a revealing position</b></p>	<p><b>Touching, making physical contact</b></p> <p><b>Standing too close</b></p> <p><b>A "too lengthy" handshake</b></p> <p><b>Patting, hugging, rubbing against someone</b></p>

## Part II: Discrimination

Some examples of hostile environment sexual harassment are:

- ✓ A male employee complains to you that the all male work group consistently uses profane language and tells sexually explicit jokes/stories in the workplace. He is offended and wants the inappropriate behavior to cease.
- ✓ A female employee complains to you that after refusing the sexual advances of a male supervisor, he made comments about her to other employees in the workgroup and she is now being excluded from workgroup activities. She states she is uncomfortable with the work environment and wants the comments and exclusion to stop.
- ✓ A female employee complains that upon entering a support office area, she was greeted by a male employee of the office with the comment "Oh, here's the street-walker again...oh, uhh, I meant to say, hallwalker.
- ✓ A management official congratulates a female project manager on a job well done with an uninvited kiss on the cheek.
- ✓ A female employee complains to you that a coworker is coming to her home in the evenings, unsolicited and unwelcome; she has called the police for assistance. She further states the male coworker has followed her in his vehicle; has accosted her in the hallway on her lunch break and has threatened to damage her reputation at work if she continues to refuse to see him. She provides proof of her allegations with a hand written note signed by the male employee which was sent through the office mail distribution system and contains overt threats. It is your opinion that a previous personal relationship existed between the two employees which is no longer desired by the female. The male is married.

### c. What Can You Do About It?

Protect your employees, yourself, and the organization against incidents of sexual harassment by taking pro-active, assertive actions that can help prevent sexual harassment from occurring.

**You must act as a role model -  
"walk the talk" in recognizing  
sexual harassment, eliminating  
it from the workplace, and  
preventing it from occurring in  
the future.**

## Part II: Discrimination

### Recommended Individual Actions:

- Actively demonstrate intolerance for sexual harassment.
- Encourage employees to *assertively* respond to situations/behaviors that they find offensive so that the situation may be resolved at the lowest level. Challenge employees to remain consistent and persistent in the assertive message they send-in words and in actions.
- \* Report any harassing behavior to the EEO Officer immediately.
- Recognize the signs of harassment and stop it before it becomes a problem; be proactive.
- Maintain an on-going dialogue with all employees to show your support for resolving instances of sexual harassment.
- When an employee makes an allegation, ask the employee to describe the behavior he/she finds offensive. Give status to an employee's allegation-take the allegation seriously.
- Do not judge the "merit" of the complaint based on your personal standards of "unwanted" or "of a sexual nature." If the perception of the behavior described by the employee is within the policy guidelines, then the complaint is legitimate.
- When presented with an allegation of sexual harassment, contact the EEO and HR Offices for advice on how to proceed. Avoid inaction; the problem will not go away, it will just go underground.

## Part II: Discrimination

### EXERCISE #2: Test Your Ability to Recognize Sexual Harassment

Check any situation below that you believe constitutes sexual harassment.

- A person has been made to feel that he/she must submit to or accept sexual overtures as a condition of employment.
- A male allows his eyes to wander to a female's anatomy while having a conversation with her.
- A person has been made to feel that to submit to or to reject sexual conduct will affect his/her employment, advancement, evaluation, or work assignment.
- A female worker's inappropriate attire causes an uncomfortable distraction among male co-workers.
- A person tells a joke about blondes, women, or homosexuals.
- An individual feels sexually intimidated by the work environment.
- A female supervisor repeatedly invites a male subordinate to go out with her.
- An employee, making a friendly gesture, touches another employee, and causes discomfort or annoyance.
- An employee makes an unwanted sexual advance to a person of the same sex.
- Workers stare or whistle when a woman enters the workplace or a meeting.
- Unwanted compliments about how clothing makes a person look.

Answers: Any of the situations described COULD be sexual harassment. Some are considered harassment even if there is only one occurrence of the misconduct.

## **Part III: Hostile Working Environment**

**1. *The hostile working environment concept*** originated out of sexual harassment cases. It is now a phrase or concept used universally in race, religion, age, and all other types of discrimination. Its purpose is to indicate that the complainant's workplace environment has become polluted by several negative incidents, actions, behaviors of an adverse nature, which have resulted in a hostile environment that the complainant believes to be caused by their race, age, religion, etc.

Managers and supervisors have an obligation to identify potential areas of discrimination or harassment and act as role models by using appropriate language and displaying behavior that supports equal opportunity and affirmative action.

To effectively support EEO guidelines, managers, and supervisors must develop an awareness of the signals that indicate discrimination is taking place. If this goes against a manager's or supervisor's personal value system, that manager or supervisor should be aware of discrimination laws and the possible consequences of violating them. Developing a positive attitude toward EEO in leadership styles will be of great benefit to managers and supervisors. It is increasingly essential to take an active rather than a passive role to discourage discrimination and to support EEO policies and procedures. See the chapter on affirmative employment regarding attitude.

### **2. *Perpetuating Discrimination***

Perpetuating discrimination is something you may be doing unconsciously. Usually it is based on your personal values, or the way your role models operate or merely because that is the way things have always been done.

Your values were set early in life. They were influenced by your parents, teachers, local politics, the economy, music, religion, the media and many other elements that played a role in your life.

- When you assign a project to a member of your staff, question whether you may be discriminating (are you acting on unconscious perceptions regarding abilities?).

## **Part III: Hostile Working Environment**

- The way that you develop-or neglect to develop-your staff for promotional opportunities may be discriminatory (are you only developing those you "like", are most like you, or those that yell the loudest?).
- How you hire, promote, discharge, or select candidates for layoff may be violations of EEO laws (are you considering non-job related factors such as "he/she needs the money more than X?").
- Is every new member of your staff receiving appropriate levels of mentoring, both to orient them to the work group and to ensure that they know what they need to do to enhance their promotability [i.e., Professional Engineer (PE) or Engineer-in-Training (EIT) completion]?
- Are your performance appraisals accurate and fair? If you did not select one of your employees for a promotion due to their current performance level, will this be a surprise to that employee or is it reflected in your ratings of the employee?
- Are all of your employees being treated equitably in awards, counseling, discipline, etc.; or are any of them being held to lower or higher standards than the others on your team? Do you have obvious favorites?

**TO CONTINUE PRACTICES THAT PERPETUATE  
DISCRIMINATION IS ILLEGAL  
WHETHER DONE CONSCIOUSLY OR UNCONSCIOUSLY!**

### **3. Mistakes:**

Behaviors that perpetuate discrimination, harassment, or unfair treatment must be avoided if we are to succeed in providing equal employment opportunities and practices in this country. Managers and supervisors must look at their own behaviors-as well as those of employees-that are inappropriate and lead to unfair treatment. Check the behaviors that you feel need to change in your organization.

## **Part III: Hostile Working Environment**

- Ignoring employees who discriminate or harass, knowingly or unknowingly. This includes failing to take appropriate action and follow up when an employee brings an allegation of discrimination or harassment to the attention of a supervisor.
- Considering ethnic joke telling as harmless fun.
- Selecting individuals for employment, promotion, layoff, or projects based on personal preferences instead of job requirements.
- Intentionally neglecting opportunities to train women and minorities to become promotable.
- Asking questions about age, high school, or college completion dates, marital status, or family obligations during pre-employment interviews.
- Creating a project team, task force, or management group that intentionally excludes women, minorities, or the disabled, based on their gender, race, or disability and not on their abilities.
- Allowing pictures of scantily clad men/women in the workplace.
- Failing to provide training for managers and supervisors so that they are not in compliance with equal employment opportunity laws.

### **EXERCISE #3: Stay Alert for Signs of Discrimination**

It is important to recognize signals that suggest discrimination. Ignoring subtle indicators of discriminatory practices can lead to BIG problems.

Following are signals that suggest discrimination is taking place. Put a check in front of any that you know exist in your organization. Then set up an action plan to correct the discriminatory practice.

- Employees are segregated.
- There is no formal EEO policy statement.

### **Part III: Hostile Working Environment**

Exercise (Cont'd)

- Ethnic jokes are told in public and not discouraged by management.
- Employees are encouraged to attend "all male" or "all minority" meetings and functions.
- Women and minority applicants are declined positions more frequently than men and non-minorities.
- Opportunities for career improvement and management positions are not offered to women and minorities.
- Men and women are paid different salaries for comparable work.
- There are few minority employees or people with disabilities in the workplace.
- There is a significant lack of employees over the age of 40.
- There is no written affirmative action plan.
- Provisions for people with disabilities do not exist at entrances, in rest rooms or in parking lots. Configuration of office is not wheelchair accessible.
- Women are treated differently than men in most aspects of the work.
- Minorities are positioned in the lower paying jobs.
- Management's attitude is that sexual harassment is brought on by the victim or that it does not exist.
- Managers use the word "qualified" to discuss people of color candidates for positions—but never use the word "qualified" when discussing white applicants?
- Staff turnover is higher among people of color and/or women.

## Part III: Hostile Working Environment

Exercise (Cont'd)

- It is assumed that a person of color was employed only because of affirmative action and is probably not qualified for the job.
- It is the responsibility of minority employees to educate whites about their culture.
- We should all just concentrate on doing the job we're paid to do.
- It is the aggrieved person's responsibility to tell a perpetrator of sexual harassment to stop.
- EEO is only for people of color, women and people with disabilities.
- It is believed that successful and well-qualified people with disabilities are brave and courageous. Hiring them is a great favor we do for them.

### EXERCISE #4: What You know About Your Work Environment

Answer the following true/false questions.

T	F	
		1. EEO laws are justified.
		2. Women are best suited for the traditionally-female occupations rather than the higher classified positions requiring more education and more skills, as well as management positions.
		3. Minorities have vivid imaginations, which lead them to believe they are discriminated against.
		4. Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of color, race, religion, sex, or national origin.
		5. Persons between the ages of 40 and 70 are protected by the Age Discrimination in Employment Act of 1967.
		6. People with disabilities are defined as persons who have a record of physical or mental impairment, history of alcoholism, asthma, diabetes, epilepsy, or other diseases.
		7. The 1980 Sexual Harassment Guidelines provide that

## Part III: Hostile Working Environment

Table (cont'd)

		an employer is responsible for the acts of its agents and supervisory employees with respect to sexual harassment.
		8. It is okay to use paper and pencil tests to screen applicants if you feel these instruments help you make a hiring decision.
		9. The Family and Medical Leave Act of 1993 (FMLA) allows fathers to take family care absence for the birth of a baby.
		10. It is possible that sexual harassment charges can be filed against the supervisor or person accused of the harassing behavior as well as the employer.
		11. There is little the supervisor can do to promote equal employment opportunity.
		Answers: True (1,4,5,6,7,9,10); False (2,3,8,11)

### EXERCISE #5: Perpetuating Discrimination

Any time a manager or supervisor makes a decision involving employees, he or she has an opportunity either to discriminate against them or to support equal opportunity.

Circle any practice you feel perpetuates discrimination in the organization. Then check your responses at the bottom of the page.

1. Refusing to hire a pregnant woman because she may elect to stay home after the birth.
2. Not scheduling older workers for training because you believe it would be a waste of time and money.
3. Giving a disabled individual special consideration in meeting production goals.
4. Eliminating qualified persons from consideration for a job due to lack of formal education when education is not a job requirement.
5. Hiring qualified minority applicants regardless of the personal bias of customers.

### **Part III: Hostile Working Environment**

6. Allowing an employee time off for religious activities, or allowing religious practices on company time so long as it does not affect production.
7. Judging candidates for hire or promotion by including more than just their ability to perform the job.
8. Selecting an employee for a project should be focused on the top performers.
9. Identifying candidates for layoff should not include minorities.
10. Promoting young men within the company will ensure stable and consistent management in the future.

**ANSWERS:** Following the practices outlined in 1, 2, 3, 4, 7, 9, and 10 may lead to serious problems and certainly supports discrimination.

### **Part IV: Special Emphasis Program**

#### **1. What is the Special Emphasis Program?**

The **Special Emphasis Program (SEP)** is an integral part of the overall Equal Employment Opportunity Program. The SEP strives to ensure equal opportunity in the hiring, advancement, training, and treatment of women and minorities. It provides a means of incorporating EEO goals into the Corps' everyday personnel relations.

#### ***a. Under What Authority Does the SEP Operate?***

AR 690-12 dated 4 March 1988, establishes policies and procedures governing equal employment opportunity and affirmative action in the Department of the Army (includes the U. S. Army Corps of Engineers).

#### ***b. Who Administers the SEP?***

The District EEO Officer is responsible for managing the affirmative employment program and the Special Emphasis Program.

## **Part IV: Special Emphasis Program**

The Vicksburg District EEO Office (MVK-EO), as the operating and staff office for MVD-EO, manages the SEP for MVD and well as for MVK.

The SEP is part of the total EEO program and allows for the proactive awareness initiatives necessary to maintain an effective and implementable EEO program.

### ***c. Points to Remember:***

- ✓ Policies, regardless of how well written, are meaningless unless meaningful effort is devoted to making them work.
- ✓ Effort that is undirected by specific and meaningful initiatives is inadequate.
- ✓ Dedicated supervisors and managers who are committed to an equal opportunity environment for all are what make the program effective.

### ***d. Who Does the SEP Represent?***

The **SEP** officially, by regulation, represents a unified commitment to those individuals serviced by the:

- **Federal Women's Program**
- **Hispanic Employment Program**
- **Black Employment Program**
- **Disability Employment Program**

However, unofficially, the program strives to meet all of the equal opportunity needs of the entire workforce.

### ***e. Is the SEP an Advocate of Preferential Treatment?***

No. Every manager and supervisor has the responsibility to provide equitable treatment of all employees and to assure equal opportunity for all women, minorities, and the disabled in all aspects of employment.

## **Part IV: Special Emphasis Program**

### ***f. What is the Role of the SEP Manager?***

The Special Emphasis Program Manager is responsible for providing leadership, direction, and technical guidance to the SEP Committee (**SEPC**) assuring planned actions are supportive of the EEO program and affirmative employment goals.

### ***g. Why were the SEP and SEPC Created?***

The SEP was created to assist the division/district in its efforts to achieve a workforce in which women, minorities, and people with disabilities are fully represented throughout the organization. The SEPC provides an opportunity for more individuals to become involved and contribute to the division/district affirmative employment goals.

### ***h. Acting Affirmatively***

The intent of the Special Emphasis Program is to:

- Assist in the development and implementation of the AEP.
- Follow through on implementing the AEP until the desired goals are achieved.
- Model and disseminate equal employment opportunity principles and practices.

### ***i. Who Can Join the SEPC?***

Everyone is encouraged to participate. You do not have to be a woman, a minority, or a person with a disability in order to be a member of the SEPC. You only need the motivation to help accomplish the goals of EEO.

### ***j. How Does the SEPC Interface with the Community?***

The SEPC maintains regular contact with local groups and organizations concerned with improving employment and career opportunities for women, minorities, and people with disabilities. Good community relations are built through the sharing of information and resources.

## **Part IV: Special Emphasis Program**

### ***k. What Can I Do to Demonstrate Support of the SEP?***

You can demonstrate support of the SEP by chairing a committee, serving on one or more subcommittees (where applicable), or volunteering to assist with and attending the SEP activities. Watch your bulletin board for SEPC activity notices.

## **Part V: Diversity**

### **1. Equal Employment Opportunity, Affirmative Action, and Diversity: What's The Difference?**

One of the most common misconceptions about diversity is that it is really only affirmative action or EEO with a new name. Although this is not true, EEO, affirmative action, and diversity efforts are not mutually exclusive and can ideally support one another. Outlining the differences will be critical in getting people to respond positively.

EEO and Affirmative Action serve *social* purposes. Diversity management, on the other hand, serves *economic* purposes. Diversity management differs in purpose, approach, character, and scope.

EEO and Affirmative Action were designed to eliminate barriers to employment opportunities certain groups face and combat racism and prejudice in hiring practices. In defending against prejudice, EEO denies differences among people.

Many organizations found that meeting affirmative action hiring goals was possible. The difficulty was in retention, particularly in management. One of the factors contributing to the poor retention rate was that success for individuals different than those in the mainstream was based on how able the person was to fit in, or assimilate. His or her difference was downplayed or often ignored entirely. This was a high price for many individuals to pay and the result was a high turnover rate.

Diversity management suggests that success be based less on assimilation and more on inclusion. The goal is to seek out and encourage the new perspectives and approaches to situations that different employees bring to work. To value and capitalize on the differences people bring to their work, organizations must

## Part V: Diversity

be willing to make whatever changes are necessary - systems, rules, procedures, management practices - that unintentionally give certain people advantages over others.

Diversity management is different from Equal Employment Opportunity and Affirmative Action in purpose, approach, character, and scope:

**Replace this page with the handout.**

<b>EEO and Affirmative Action</b>	<b>Diversity Management</b>
<ul style="list-style-type: none"> <li>• Social purposes.</li> <li>• Fueled by legal or moral concerns.</li> <li>• Designed to combat racism and prejudice in hiring practices.</li> <li>• Reactive. Sets recruitment/hiring goals and monitors compliance.</li> <li>• Set up to overcome barriers certain groups face due to racism, prejudice, and bias.</li> <li>• Being different traditionally seen as mark of inferiority.</li> <li>• Equal rights means everyone is treated the same.</li> <li>• Denies differences among people.</li> <li>• Differences became sore points or problem areas.</li> </ul>	<ul style="list-style-type: none"> <li>• Economic purposes.</li> <li>• Fueled by "good business."</li> <li>• Designed to increase productivity and profitability in businesses and organizations.</li> <li>• Proactive. Uses a variety of tools, programs, procedures, and strategies to maximize each person's contributions.</li> <li>• Looks at the current situation and moves forward to make the most of it.</li> <li>• Leaders realize being "different" does not mean "inferior." Different is normal.</li> <li>• Realizes that different people value different rewards.</li> <li>• Confronts reality of differences and acknowledges them.</li> <li>• Values differences and strives to turn them into advantages by translating them into an organization's assets.</li> </ul>

## Part V: Diversity

### 2. What Is Diversity?

Headquarters Department of the Army (HQDA) defines diversity as....."a workforce comprised of individuals from multiple segments of society who work in an environment in which all collaborate to achieve common organizational objectives, while succeeding individually. HQDA states the goal..."to improve the effectiveness of human resources, individually, and organizationally, so that all members contribute to their maximum potential."

Diversity also refers to the ways people differ from each other. These ways are significant.

- **Culturally**, we vary in:
  - Gender
  - Age
  - Ethnicity
  - Race
  - Sexual orientation
  - Educational background
  - Religion
  - Physical/mental ability
  - Lifestyle
  - Immigrant status
  - Language facility
- **Functionally**, we vary in the ways we:
  - Think
  - Learn
  - Process information
  - Respond to authority
  - Show respect
  - Reach agreements
- **Historically**, we vary in:
  - Family make-up
  - Perspective
  - Political outlook
  - Inter-group relationships

## Part V: Diversity

### So there are Differences. So What?

When work groups are made up of people with many backgrounds, cultures and lifestyles, promoting teamwork and smooth interactions can be a challenge. Finding new ways to work together will require thinking about individual differences-not to divide, separate or exclude- but to take advantage of those differences. We need to create environments that welcome and encourage diversity and its benefits.

## Part VI: Roles and Responsibilities

### 1. EEO Guidelines For Managers And Supervisors

Supervisors and managers are responsible for protecting the rights of employees and the agency under current EEO laws. The following guidelines suggest a positive way to do so.

- EEO law is complex and is constantly being tested and interpreted in the courts. Be alert for changes. When in doubt about how to proceed, seek the advice of the Corps' legal, human resources, and EEO advisers.
- Create and maintain an atmosphere within your organization that demonstrates your awareness and **support** of equal employment policies.
- Refuse to permit discriminatory acts of any type by anyone in your organization. Racial slurs, jokes, and sexual harassment are offensive and have no place on the job. Even seemingly small incidents can make people **uncomfortable** and lead to charges of discrimination and subsequent investigations.
- Challenge yourself if you find that you are stereotyping anyone based on their EEO group membership. Remind yourself that everyone is an individual and **you** would not want to be stereotyped because of your own race/national origin or gender group.
- Analyze the positions you supervise to ensure the qualifications required of the people who fill them are based on job-related requirements.

## **Part VI: Roles and Responsibilities**

- Be sure non-discriminatory practices are being followed in all recruitment and hiring activities that you are involved in.
- Look for possible inequities in pay, job assignments, special projects, training, and promotional practices under your jurisdiction and correct them.
- Fully implement the division's/district's affirmative employment plans, and whenever possible, lend your expertise to their development.
- Make an effort to support and assist qualified females, minorities, and disabled employees to advance within your organization.
- Document any disciplinary action you take. Also, carefully document your reasons for selections, terminations, transfers, promotions, or other personnel actions. Be sure your documentation is adequate to support the action. If there is any doubt, check with your human resources or EEO officials.
- Do not retain unsatisfactory performers for any reason. Make every reasonable effort to help them meet standards and document these efforts. Then, if they can not do the job, terminate them or move them to a position they can adequately perform in.

### **2. Develop A Personal Action Plan**

*Reflect for a moment on what you have been learning-then develop an action plan to apply these concepts.*

Think about the material you have read. Review the self-analysis questionnaires, case studies and examples. A clear plan of action based on what you do not know will assist you to clarify your goals. Also, you should have learned some things about yourself. Consider what these things are and make a commitment to yourself to develop a personal action plan to assist you in dealing with any EEO problems you may encounter.

## Part VI: Roles and Responsibilities

### Exercise #6: MY PERSONAL ACTION PLAN

1. My current knowledge of equal employment opportunity laws and the division's/district's affirmative employment plan is

ADEQUATE\_\_\_\_\_

NEEDS IMPROVEMENT\_\_\_\_\_

2. I need to improve my knowledge and understanding in the following areas:

\_\_\_\_\_

3. My goals for improving the status of my organization under the division's/district's affirmative employment plan are as follows: (Be sure they are specific, attainable, and measurable.)

\_\_\_\_\_

4. The following people and resources can help me achieve my goals:

\_\_\_\_\_

5. Following are my action steps, along with a timetable, to accomplish each goal:

\_\_\_\_\_

## Part VII: Pitfalls For Supervisors

1. Too often, managers and supervisors, whether consciously or unconsciously, make decisions that lead to complaints of discrimination. These decisions may be based on past experiences, lack of information, lack of adequate documentation to support action, or even poor judgment. Below, you will find some pitfalls that become causes for action against supervisors and managers, thus complaints of discrimination are filed. When making decisions that impact your employees, consider these actions and then decide if you are making the right decision.

## **Part VII: Pitfalls For Supervisors**

### ***a. Performance Appraisals***

- Inflating performance appraisals.
- Using the performance appraisal as a counseling statement
- Including derogatory remarks on appraisals when there is no official documentation to support the remarks, and/or the remarks are not related to the level of performance.
- Failing to take a legitimate performance-based action because the ratee is a member of an EEO group (e.g., minority, woman, person with a disability).

### ***b. Disciplinary Actions***

- Failing to document conduct problems.
- Engaging in differential treatment in disciplinary actions from others not similarly situated when there is no past formal counseling or previous disciplinary action(s) to support the differential treatment.
- Providing personal negative feedback in front of peers or calling them in where everyone can hear that they are about to receive counseling.
- Failing to take a legitimate disciplinary action because the offender is a member of an EEO group (e.g., minority, woman, person with a disability).

### ***c. Selections***

- Making selections for awards and/or promotions based on "gut feelings" or other non job-related factors.
- Making age-related comments in selections.
- Failing to give appropriate consideration because that candidate has a disability that MAY need to be accommodated.
- Failing to give appropriate consideration to candidates from underrepresented EEO groups when there is a numerical goal for that group in the affirmative employment program plan.
- Demanding higher qualifications from minorities, women, or persons with disabilities.
- Refusing to give appropriate consideration to a candidate because of their past involvement in the grievance, EEO, or other official complaint system.

## **Part VII: Pitfalls For Supervisors**

- Sharing history of involvement in the grievance, EEO, or other official complaint system with another selecting supervisor to "warn" him/her that the candidate is a "troublemaker" or "not a team player."
- Refusing to select a minority, woman, or disabled person because of fear that that candidate would not fit in or that the work group would not accept that individual in the workplace.

### ***d. Other Areas***

- Permitting banter, back and forth, of ethnic or sexual humor in the workplace, even if no one has objected.
- Providing derogatory comments to a prospective employer of selecting official when the information cannot be verified in the employee's official records.
- Yelling, screaming, cursing, using a raised voice, or verbally attacking an individual instead of discussing inappropriate behavior or addressing a specific performance deficiency.
- Failing to investigate and/or take appropriate action when an employee brings an allegation of harassment or abuse to the supervisor's attention (going beyond asking the accused "did you do it?").
- Failing to bring closure back to the individuals, both the one(s) who made the allegation and the one(s) alleged to have engaged in the offending behavior.
- Showing hostility towards the EEO program.
- Restricting employee's access to the EEO Office.

### **2. Retaliation**

There are some actions that supervisors and managers should be aware of when dealing with employees who have availed themselves of the grievance, EEO, or other official complaint process. These actions lead to allegations of retaliation.

- Lowering the employee's performance appraisal with no substantiation, after the employee has filed a complaint.
- Denying training opportunities or desirable or developmental assignments that normally would have been made available to the employee.
- Denying leave for non business-related reasons, or waiting until the last minute to approve leave.

## **Part VII: Pitfalls For Supervisors**

- Making derogatory comments to other potential supervisors, other personnel or in remarks on the appraisal.
- Failing to take an employment action because of the employee having filed a previous complaint.
- Making sarcastic remarks to or about the employee.
- Failing to greet the employee as the supervisor does to others in the workgroup.
- Refusing to speak to the employee in person (leaving notes and/or sending email messages).
- Closely watching the employee to catch him/her doing something wrong or making an error.
- Treating the employee differently regarding rules on social conversations, breaks, and lunchtime.
- Failing to introduce the employee to new team members.
- Excluding the employee from social invitations extended to all other team members.
- Giving the employee all of the assignments that nobody else in the work group wants.
- Discussing the complaint/appeal/grievance with anyone who does not have an official "need to know", especially with other employees or potential selecting officials.

## **Part VIII: Summary Of The Federal EEO Laws And Orders**

### **\*TITLE VII, CIVIL RIGHTS ACT OF 1964, AS AMENDED BY EEO ACT OF 1972**

- Prohibits discrimination on the basis of race, color, religion, sex, or national origin in the Federal government. Prohibits practices identified by statistically determined adverse impact as well as intentional unequal treatment.
- Personnel actions involving hiring, placement, training, promotion, termination, and layoff are covered.
- Title VII established the Equal Employment Opportunity Commission (EEOC) to enforce the law. The amendment in 1972 enables the EEOC to enforce Title VII through court action.

## **Part VIII: Summary Of The Federal EEO Laws And Orders**

### **\*SECTION 717 OF TITLE VII**

- In the 1972 amendments to Title VII of the Civil Rights Act (Section 717, 42 U.S.C. 2000e-16), Congress required agencies to maintain affirmative employment programs to ensure enforcement of Federal equal employment opportunity policy; to apply the same legal standards to prohibited discrimination established for private employers to the Federal government; and to eliminate discrimination that Congress found existing throughout the Federal employment system.

### **\*CIVIL RIGHTS ACT OF 1991 (CRA)**

- Amended Title VII, Civil Rights Act of 1964 by authorizing the payment of compensatory damages for such things as emotional pain, suffering, and future economic losses. The amendment created the right to a jury trial and entitlement to attorneys' fees for successful pursuit of discrimination complaints. Established the standard in adverse impact employment discrimination cases that, once the plaintiff makes a prima facie showing of discrimination, the burden of production/persuasion shifts to the agency.

### **\*AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, AS AMENDED**

- Prohibits discriminating against persons between the ages of 40 and 70 in any area of employment because of age. Some retirement and/or benefit systems are exempt from these provisions.

### **\*REHABILITATION ACT OF 1973, AS AMENDED (Provisions of the Americans with Disabilities Act of 1990 are incorporated into this statute)**

- The purpose of this act is to make it easier for disabled persons to hold jobs, travel, use public communication services and integrate into society. The act prohibits discrimination based on disabilities in the areas of employment, public services, public transportation, public accommodations, and telecommunications. Disabilities include visual, speech, hearing and

## **Part VIII: Summary Of The Federal EEO Laws And Orders**

orthopedic impairments, tuberculosis, HIV infection and AIDS, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, and psychiatric disorders.

### **\*FAMILY AND MEDICAL LEAVE ACT OF 1993 (5 U.S.C. Section 6382)**

- Requires Federal agencies and departments to allow employees to take up to twelve weeks of leave without pay, provided that the employee or a member of his/her immediate family (spouse, son, daughter, or parent) has a serious health condition and the employee meets several other statutory criteria. The leave may be taken intermittently or on a reduced leave schedule when medically necessary. Agencies may require the employee to transfer temporarily to another position under certain circumstances.

### **\*PUBLIC LAW 103-353, THE VETERAN'S REEMPLOYMENT RIGHTS (VRR) LAW**

- The 1994 statute provided rights of reemployment by servicemen and women who return to the workforce after a period of military service. Additionally, the law prohibits discrimination against persons because of their service in the military and provides for health and retirement entitlements.

### **\*REHABILITATION ACT OF 1973**

- Section 501 prohibits employment discrimination against qualified individuals with disabilities in the Federal sector. The term "individual with a disability" means...any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. The law:

0 Requires Federal employers not to discriminate against qualified job applicants or employees with disabilities. Persons with disabilities should be employed in all grade levels and occupational series commensurate with their

## **Part VIII: Summary Of The Federal EEO Laws And Orders**

qualifications. Federal employers should ensure that their policies do not unnecessarily exclude or limit persons with disabilities because of a job's structure or because of architectural, transportation, communications, procedural, or attitudinal barriers.

- 0 Requires employers to make "reasonable accommodations" to applicants and employees with disabilities. Such accommodations may involve, for example, restructuring the job, reassignment, modifying work schedules, adjusting or modifying examinations, providing readers or interpreters, and acquiring or modifying equipment and/or facilities (including the use of adaptive technology such as voice recognition software).
  - 0 Prohibits selection criteria and standards which tend to screen out people with disabilities, unless such procedures have been determined through job analysis to be job-related and consistent with business necessity, and an appropriate individualized assessment indicates that the job applicant cannot perform the essential functions of the job, with or without reasonable accommodation.
  - 0 Requires Federal agencies to develop affirmative action programs for hiring, placement and advancement of persons with disabilities. Affirmative action must be an integral part of ongoing agency personnel management programs.
- Section 505 contains provisions governing remedies and attorney's fees under Section 501.
  - Section 508 requires Federal agencies to procure, use, maintain, and develop only accessible electronic and information technology, unless doing so imposes an undue burden. National security systems are exempt.

## **Part VIII: Summary Of The Federal EEO Laws And Orders**

### **\*EXECUTIVE ORDER 11246, AS AMENDED BY EXECUTIVE ORDER 11375**

- Requires all Federal contractors and subcontractors with contracts over \$50,000 and 50 or more employees to develop and implement an Affirmative Action Plan to be monitored by the Department of Labor. Revised Order 4 covers underutilization of females and minorities and Rule 410:2741 covers payment of dues in private clubs that discriminate on the basis of race, sex, religion, and national origin.

## **Part IX: ACRONYMS, TERMS AND DEFINITIONS**

### **SECTION I**

The following are some commonly used acronyms and terms associated with EEO program activity.

**ADEA** - Age Discrimination in Employment Act

**ADR** - Alternative Dispute Resolution

**AEP** - Affirmative Employment Program

**AEPP** - Affirmative Employment Program Plan

**AI/AN** - American Indian/Alaskan Native

**AI/ANEP** - American Indian/Alaskan Native Employment Program

**AJ** - Administrative Judge

**A/PAEP** - Asian/ Pacific American Employment Program

**A/PAEPM** - Asian/ Pacific American Employment Program Manager

**ARNG** - Army Reserve National Guard

**ASA (M&RA)** - Assistant Secretary of the Army (Manpower and Reserve Affairs)

**BEP** - Black Employment Program

**BEMP** - Black Employment Program Manager

**BIG** - Blacks in Government

**CAD** - Census Availability Data

**29 CFR 1614** - Code of Federal Regulations on Federal Sector Equal Employment Opportunity

**COE** - Chief of Engineers

**CPAC** - Civilian Personnel Advisory Center

**CPEA** - Civilian Personnel Evaluation Agency

**CPM** - Career Program Manager

**Part IX: ACRONYMS, TERMS AND DEFINITIONS**  
**SECTION I**

**CPO** - Civilian Personnel Officers

**CPOC** - Civilian Personnel Operations Center

**DA** - Department of the Army

**DCPDS**- Defense Civilian Personnel Data System

**DCSPER** - Deputy Chief of Staff for Personnel

**DoD** - Department of Defense

**DVAAP** - Disabled Veterans Affirmative Action Program

**EPA** - Equal Pay Act

**EEO** - Equal Employment Opportunity

**EEOC** - Equal Employment Opportunity Commission

**EEOO** - Equal Employment Opportunity Officer

**EEOCCRA** - Equal Employment Opportunity Compliance Complaints Review Agency

**FAD** - Final Army Decision

**FAR** - Federal Acquisition Regulation

**FEORP** - Federal Equal Opportunity Recruitment Program

**FWP** - Federal Women's Program

**FWPM** - Federal Women's Program Manager

**FY** - Fiscal Year

**GSA** - General Services Administration

**HBCU** - Historically Black Colleges and Universities

**HEP** - Hispanic Employment Program

**HEPM** - Hispanic Employment Program Manager

## **Part IX: ACRONYMS, TERMS AND DEFINITIONS**

### **SECTION I**

**HIS** - Hispanic Serving Institutions

**HQDA** - Headquarters, Department of the Army

**MACOM** - Major Army Command

**MER** - Management – Employee Relations

**MI** - Minority Institutions

**MSPB** - Merit Systems Protection Board

**NAACP** - National Association for the Advancement of Colored People

**NAFEO** - National Association for Equal Opportunity in Higher Education

**OASA (M&RA)** - Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs)

**OCI** - Office of Complaints Investigation

**OPM** - Office of Personnel Management

**PIWD** - Program for Individuals with Disabilities

**PMIWD** - Program Manager for Individuals with Disabilities

**RNO** - Race or National Origin

**ROTC** - Reserve Officer Training Candidate

**SAMR-SFEOA** - Secretary of the Army (Manpower and Reserve Affairs) – Equal Employment Opportunity Agency

**SEP** - Special Emphasis Program

**SEPM** - Special Emphasis Program Manager

**TAPES** - Total Army Personnel Evaluation System

**USACPEA** - United States Army Civilian Personnel Evaluation Agency

**USAR** - United States Army Reserves

**Part IX: ACRONYMS, TERMS AND DEFINITIONS**  
**SECTION II**

**Affirmative Employment**

Action taken to provide equal employment opportunity in hiring, promotion, training, recognition, and all other aspects of employment to minority group members, women, individuals with disabilities and disabled veterans.

**American Indian/Alaskan Native**

Used to describe the 510 Federally recognized tribes, including the 200 Alaskan Native groups such as Eskimos and the Aleuts.

**Asian/Pacific American**

A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

**Discrimination**

Illegal treatment of a person or group based on race, color, national origin, religion, sex, age, or disability.

**Disparate Treatment**

Treating an employee of another race, religion, sex, color, or national origin differently.

**Equal Employment Opportunity**

The right of all persons to work and advance on the basis of merit, ability, and potential, free from social, personal, or institutional barriers of prejudice and discrimination.

**Individual with Disability**

An individual who has a physical or mental impairment that substantially limits one or more major life activity, has a record of such impairment, or is regarded as having such an impairment.

**Hispanic**

A person of Puerto Rican, Mexican, Cuban, Central or South American, or other Spanish culture or origin regardless of race.

**Minority**

A person having origins in Black racial groups of Africa; Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin regardless of race; Asians; Pacific Islanders; American Indians or Alaskan Natives.

**Reverse Discrimination**

Hiring, promoting, training or retaining unqualified or non-performing minorities over white males.

**Part IX: ACRONYMS, TERMS AND DEFINITIONS**  
**SECTION II**

**Sexual Harassment**

Deliberate or repeated, unsolicited verbal comments, gestures or physical contact of a sexual nature that are unwelcome.

**Standard Deviation**

A measure of uncertainty in a random variable; a summary measure of the differences of each observation from the mean.

**Underutilization**

Having fewer minorities or women in a particular job group than would reasonably be expected by their availability in the job market.

**Veterans**

*Disabled veterans:* Persons entitled to compensation for a disability incurred or aggravated in the line of duty that caused release or discharge from active duty.

*Qualified disabled:* Disabled veterans capable of performing a particular job, with reasonable accommodations for the disability.

*Vietnam veterans:* Persons who served on active duty for more than 180 days during the Vietnam Era and were discharged or released with other than a dishonorable discharge, or were discharged or released due to a disability which was incurred during the Vietnam Era.